

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **VICE CHAIRMAN DEE L. BROWN**, on April 6, 2005
at 8:00 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Dee L. Brown, Vice Chairman (R)
Rep. Veronica Small-Eastman, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Mary Caferro (D)
Rep. Sue Dickenson (D)
Rep. Emelie Eaton (D)
Rep. Robin Hamilton (D)
Rep. Gordon R. Hendrick (R)
Rep. Teresa K. Henry (D)
Rep. Hal Jacobson (D)
Rep. William J. Jones (R)
Rep. Gary MacLaren (R)
Rep. Bruce Malcolm (R)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)

Members Excused: Rep. Larry Jent, Chairman (D)

Members Absent: None.

Staff Present: Marion Mood, Committee Secretary
Sheri Heffelfinger, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 319, 4/4/2005; SB 477, 4/4/2005;
SJ 29, 4/4/2005
Executive Action: None

HEARING ON SB 319**Opening Statement by Sponsor:**

SEN. JON ELLINGSON (D), SD 49, opened the hearing on **SB 319**, Public financing for Supreme Court candidates. **SEN. ELLINGSON** advised this bill was necessary as the Supreme Court's fairness, impartiality and independence were increasingly at risk as a result of the manner in which campaigns were being conducted. The most likely campaign contributors were those interest groups which had a direct interest in matters coming before the Court. He proceeded to show a video: "Public Funding of Judicial Elections," featuring testimony of several judges from North Carolina, one of the states which had adopted the option of public campaign financing; he added it was the only state which thus far had adopted this concept for judicial races. All of the judges featured in the clip were in favor of the concept as it gave candidates the opportunity to focus on their campaigns as well as preserve their integrity in they eyes of a critical public.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 12.4}

SEN. ELLINGSON provided copies of a letter by Judge Linda McGee and an informational handout, prepared by the Montana Citizen's League.

EXHIBIT(sth73a01)

EXHIBIT(sth73a02)

SEN. ELLINGSON reviewed Exhibit (2), Public Funding for Judicial Elections, in its entirety. He clarified participation in the public funding concept was optional as the U.S. Supreme Court has made it clear there were First Amendment restrictions on limiting campaign financing. **SEN. ELLINGSON** suggested an amendment specifying a statutory appropriation of \$300,000 to \$350,000 which would be enough to implement this program for the next election cycle. He did not agree with the fiscal note as there would be only two Supreme Court Judges up for re-election next fall; this would present a lesser impact on the general fund.

{Tape: 1; Side: B}

Proponents' Testimony:

Gordon Bennett, self, stated he ran unsuccessfully for Associate Justice on the Montana Supreme Court 45 years ago. He contended this was a most significant piece of legislation as the independence of the judicial branch was at stake. He provided the Committee with a brief history of judicial independence, going back to the Middle Ages and the feudal system in Europe.

In closing, he cited the following statistics: the special interest cash flow in Supreme Court races nationwide has tripled since 2002; \$45 million were spent by third parties on Supreme Court races in 2004. He contended that this spending was effective, and resulted in the public's perception of the system's erosion.

Samantha Sanchez, National Institute on Money in State Politics, stated this could not have come at a better time as judicial races were growing nastier and more expensive with each election cycle. She advised one reason for the spending increase was the fact that the U.S. Supreme Court had struck down a judicial ethics code which prohibited judicial candidates from discussing their political views; the court felt this prohibition violated the candidates' free speech rights. This resulted in some interest groups demanding that candidates share their personal views on all issues and subsequently, they used their funds to elect judges who agreed with them on specific issues. She added that another reason was the decision by the U.S. Chamber of Commerce to focus money and effort on state courts in an effort to create courts that are friendlier to corporate lawyers than they are to consumers. She added the Chamber had unlimited resources and did not comply with disclosure statutes.

As an example of the type of attack ads, **Ms. Sanchez** used the Michael Dukakis/Willie Horton ad campaign; she stated that these types of ads work, adding professional consultants who work on judicial elections nationwide modeled their ads after it. To bolster her testimony, she provided an analysis on campaign contributions and their recent history in recent judicial elections in Montana.

EXHIBIT(sth73a03)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 25.5}

Jon Metropoulos, self, rose in support of SB 319. He stated the genius of the American system was the separation of power between the three branches, and the independence and impartiality of the judicial system was key. He contended if money did not cause these problems, it did cause cynicism about the independence of the judiciary.

Chris Manos, Executive Director, Montana State Bar, submitted written testimony, which also contained a printout of an internet article.

EXHIBIT(sth73a04)

{Tape: 2; Side: A}

Al Smith, Montana Trial Lawyers Association, advised his organization did not resort to mud-slinging advertisements, despite their consultants' advice. He voiced his support for SB 319 as it was good public policy, adding they had not seen indications that justice can be bought in Montana, despite of Ms. Sanchez' testimony. He stressed that the provision of matching independent expenditures with public funding eliminated the incentive for those expenditures, thereby putting an end to the nastiness. In closing, he pointed out that SB 319 did not infringe on any First Amendment rights as did SB 396.

Rita Blouke, League of Women Voters, provided written testimony. [EXHIBIT](#)(sth73a05)

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. ALAN OLSON, HD 45, ROUNDUP, asked Gordon Higgins, Commissioner of Political Practices, how much independent money was spent during the last judicial race. **Mr. Higgins** was not sure and promised to get this information.

REP. A. OLSON asked the Sponsor whether independent contributions were the basis for the estimates in the fiscal note. **SEN. ELLINGSON** replied it was difficult to predict how much third party money would have to be matched. He hoped the provision for matching funds would be a deterrent to third party spending.

REP. WILLIAM JONES, HD 9, BIGFORK, asked the Sponsor about the maximum number of candidates qualifying under this bill. **SEN. ELLINGSON** replied there was no limit on the number of candidates eligible for the funds in a contested primary as long as they raised the qualifying amounts; in the general election, it would be two. **REP. JONES** inquired about the maximum amounts for candidates in the primary as well in as in the general elections. **SEN. ELLINGSON** advised this was found on Pages 6 and 7 of the bill where it stated the qualifying candidate in a contested primary would receive \$50,000; in the general election, the candidate for Associate Justice would get \$125,000, and a candidate for Chief Justice \$150,000.

REP. SUE DICKENSON, HD 25, GREAT FALLS, asked whether the five hundred \$5 contributions had to come from certain geographic areas, which **SEN. ELLINGSON** denied, stating they had to come from registered voters.

REP. DICKENSON inquired whether he saw any problems with logistics or practicality as far as enforcing the bill's

provisions. **Mr. Higgins** advised his concern with the bill was the uncertainty of cost, which could be anywhere from \$10,000 to \$820,000 depending on participation, not counting the potential matching funds. His office would have to add a .5 Full-time Equivalent (FTE) for administrative purposes. He felt the proposed amendment for a statutory appropriation was the best way to deal with cost.

REP. JOAN ANDERSEN, HD 59, FROMBERG, asked the Sponsor who would verify that the \$5 contributors were in fact registered voters.

SEN. ELLINGSON advised this question had not arisen previously. The requirements for the contributions were spelled out in New Section 4 of the bill.

VICE CHAIR DEE BROWN, HD 3, HUNGRY HORSE asked Mr. Higgins if this verification process could be implemented through rule-making. **Mr. Higgins** felt verification should fall to his Office; he stated the bill did include rule-making provisions and added once the database was in place, it would greatly facilitate the verification process.

Closing by Sponsor:

SEN. ELLINGSON closed.

(REP. A. OLSON left at 9:20 A.M.)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 18}

HEARING ON SB 477

Opening Statement by Sponsor:

SEN. JIM ELLIOTT (D), SD 7, opened the hearing on **SB 477**, Per diem rate for persons in state portion of regional correctional facility. He stated the bill was precipitated by a complaint that the Department of Corrections (DOC) was not paying their full share of the per diem rate for State prisoners at the Missoula Regional Correctional Institute. He added there were three such facilities in Montana, namely in Missoula, Great Falls and Glendive which were reimbursed by the DOC based on an established formula. He advised one point of contention was that the DOC subtracted prison depreciation and interest on bonds from those rates; the other was that the DOC cut rates to the regional facilities when their budget decreased. He proceeded to review the bill's provisions with the Committee.

Proponents' Testimony:

Linda Stoll, Missoula County, submitted a handout detailing projected per diem rates. She stated, when the DOC does not pay their full share for the State prisoners, the burden shifted to the local property taxpayers in the county where the detention facilities are located, which has amounted to \$500,000 for Missoula County alone in the last two years. She was hopeful that an administrative rule-making process would provide certainty with regard to rate basis, public comment and legislative review. She referred to the fiscal note, which estimated a \$2 million cost in this Biennium; she objected to that amount as there was only a 2% annual rate increase for the three regional facilities. She added Missoula County would not object to changing the effective date of this bill to July 1, 2006, if the amount in HB 2 was approved.

EXHIBIT(sth73a06)

(REP. JACOBSON left at 9:30 A.M.)

Mike Sehestedt, Deputy County Attorney, Missoula County, stated he was a member of the county negotiating team and familiar with the issue. He gave a brief overview of the history behind the Missoula facility and the partnership with DOC; rate negotiations were part of the contract as there were no guarantees. **Mr. Sehestedt** referred to Page 3 of Exhibit 6, which is a letter from the DOC announcing a cut in the per diem rate. He stated that several attempts at negotiations had failed over the years, with the department arbitrarily setting a rate which was neither deemed fair nor sufficient. In closing, he addressed the issue of depreciation, stressing that they were not seeking depreciation on assets which were purchased either through Federal grants or by the State; there were items, though, which the facility had purchased. Their preference was to establish a reserve fund from which unforeseen expenses could be paid. The State had opposed this request, wanting to be notified instead of each instance as it happened with the promise to perhaps include more money in the next year.

{Tape: 2; Side: B}

Dale Bickell, Chief Financial Officer, Missoula County, reiterated previous testimony, saying this was about fair negotiations and not about padding their budget. He referred to Page 1 of the handout, which contained the agreed upon formula. **Mr. Bickell** concurred with Mr. Sehestedt's contention that they were not looking to get reimbursed for depreciation of facility assets.

Opponents' Testimony: None

(REPS. A. OLSON and JACOBSON returned at 9:40 A.M.)

Informational Testimony:

Joe Williams, DOC, stated that when the Legislature endorsed the cuts to the DOC in the 2003 Special Session, regional and private prisons lost \$883,000 and the Department about \$3 million; he added the Department did not ask these facilities to maintain the same level of service. The proposed per diem rate of \$50.64 was news to him as the bottom line during the last negotiations had been a firm \$58; this proposal was the basis for the letter in the handout. He expressed frustration as previous testimony merely provided snapshots of the negotiations without telling the whole story. He maintained that the detention facility was not forthcoming in providing operating expense information and welcomed the provisions for rule-making.

In closing, he noted that Warden Mike Mahoney, Warden, and Patrick Smith, Bureau Chief, Montana State Prison, were present and available for questions. **Mr. Smith** advised he oversaw contracts and compliance with contracts for all regional private prisons.

Questions from Committee Members and Responses:

REP. DICKENSON ascertained that Missoula County wanted the DOC to pay an additional amount for a reserve account to cover replacement costs and recapture some of the depreciation cost, stating she had sensed the Department's opposition. **SEN. ELLIOTT** advised the County was not interested in having the Department pay interest on bonds or depreciation on the portion of the prison which the Department helped fund. He deferred the reserve account issue to **Mr. Bickell** who advised the intent was not to build up a cash reserve for future contingencies. He explained the current contract required the Department to pay for an asset or their share of the asset. The depreciation issue dealt with assets purchased by the County but used by the department, in which case the County was trying to recapture that cost over time.

REP. DICKENSON asked him for an example of such an asset. **Mr. Bickell** advised one of the computer-controlled doors failed in the State wing of the facility; the replacement cost was \$6,000.

VICE CHAIR BROWN asked whether he thought if a door failed in a location paid for by taxpayers, they should pay for its replacement. **Mr. Bickell** replied, if it was determined the asset

was a shared asset, the replacements cost should be borne by each entity. If it was a large item which needed to be replaced, such as a boiler at \$300,000, it could be depreciated over time rather than causing a spike in the rates.

REP. EMELIE EATON, HD 58, LAUREL, surmised there were State contracts with Missoula, Dawson and Cascade County, which **Patrick Smith** confirmed. **REP. EATON** asked whether the costs associated with housing prisoners were the same in all facilities. **Mr. Smith** advised they were not, depending on the programs offered and the region's pay scale.

REP. ANDERSEN ascertained there were strictly separated wings for State and regional prisoners. **Mr. Sehestedt** replied this was the case with a few exceptions; the Missoula facility consisted of three pods or housing units, two of which housed county prisoners, and some of the space was rented to the U.S. Marshall who paid for those detainees. The State prisoners were housed in the third pod, but all shared a number of common areas: the kitchen and food service dealt with all three pods as did central control and the medical facilities, eliminating the need for duplication of services.

VICE CHAIR BROWN wondered whether he had heard similar complaints from the other facilities as only Missoula seemed to be represented. **Mr. Mahoney** stated these same issues had not surfaced with any of the other systems. He talked about quarterly meetings with the Regional Prisons Task Force where all areas of operating correctional facilities are looked at and discussed. He advised the whole issue started with prison overcrowding, when he was forced to house inmates elsewhere, and the Legislature authorized building regional prisons.

VICE CHAIR BROWN asked if the issue of per diem rates had been discussed at any of the quarterly meetings. **Mr. Mahoney** advised that they had been advised of a \$4 million cut to the Department prior to the 2003 Special Session and were told some of those cuts would have to be shared; he added the \$2.63 represented about \$800,000 out of the Department's \$4 million budget cut. The reduction represented a reduction in programs, not security. He advised the Montana State Prison was the most expensive as they were the only facility which housed maximum security, chronically ill and mentally ill inmates as well as those with severe health care problems; this consolidation was done in an effort to control cost.

VICE CHAIR BROWN wondered how much advance notice was given to regional facilities about the rate reduction. **Mr. Mahoney** estimated it was as much notice as he had, namely about 90 days.

Closing by Sponsor:

SEN. ELLIOTT closed.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 25.8}

HEARING ON SJ 29

Opening Statement by Sponsor:

SEN. JESSE LASLOVICH (D), SD 43, opened the hearing on SJ 29, Designate miner's day. He felt it was an important resolution for the town of Phillipsburg because of its mining history.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. A. OLSON advised he voted to suspend the rules so that this resolution could be introduced and asked whether the Sponsor would consider making this an annual event. SEN. LASLOVICH stated he would but wanted to contact his constituent for his approval.

{Tape: 3; Side: A}

SEN. A. OLSON stated he had many constituents who would appreciate this.

VICE CHAIR BROWN agreed, saying that the State had a rich mining history, and she would like to see this become an annual event as well.

REP. GORDON HENDRICK, HD 14, SUPERIOR, concurred as his district enveloped Mineral County.

REP. ANDERSEN stated Carbon County was named after the mineral that was mined there and it was the site of the largest mine disaster.

Closing by Sponsor:

SEN. LASLOVICH closed.

ADJOURNMENT

Adjournment: 10:10 A.M.

REP. LARRY JENT, Chairman

MARION MOOD, Secretary

LJ/mm

Additional Exhibits:

EXHIBIT ([sth73aad0.PDF](#))